



The ALJ denied claimant's application for benefits because it appeared that the medical records for a period of almost two years of treatment do not mention right shoulder complaints. During this period claimant made approximately 20 visits to the Hays Orthopedic Clinic, an additional 5 visits to Dr. Harry A. Morris, and 10 visits to the physical therapy department at the Russell Hospital. Claimant testified he did complain of problems on the right to Dr. Morris and although the ALJ denied benefits, he left open the possibility that claimant might later show that he had made such complaints.

The record also includes a report from Dr. C. Reiff Brown. Dr. Brown concluded, based on the history given, that claimant's right shoulder complaints resulted from overuse due to the injury on the left. But claimant testified on direct examination that his complaints on the right were essentially the same since the October 1997 accident. On redirect, claimant's counsel read the history from Dr. Brown's report, a history of gradual worsening, and claimant testified the history in Dr. Brown's report was accurate. This inconsistent testimony does not provide substantial support for the claim.

The Board agrees with and affirms the decision by the ALJ. It is possible, as claimant suggests, that the right side complaints were ignored because of the more serious left side problems. And, it is possible that claimant complained but the complaints were not recorded. It is also possible that the right side problems have developed from overuse. But, based on the record to date, claimant has not proven accidental injury arising out of and in the course of employment. The lengthy period and numerous medical visits without any recorded complaint suggests that there were no complaints and, for that reason, the Board finds claimant has not shown it to be more probably true than not that claimant sustained accidental injury arising out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on October 8, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS  
Edward D. Heath, Jr., Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director